General Assembly

Distr.: General
25 July 2018

Original: English

Human Rights Council
Thirty-ninth session
10–28 September 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the thematic report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Fabián Salvioli, pursuant to Human Rights Council resolution 27/3.

GE.18-12304(E)
1812304

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I. Introduction

1. In the present report, submitted to the Human Rights Council pursuant to its resolution 36/7, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, lists the key activities undertaken by the previous mandate holder from August 2017 to April 2018, and his own activities conducted in May and June 2018, and gives an overview of his approach to the mandate and a preliminary outline of areas of interest.

II. Activities of the previous mandate holder

2. The Special Rapporteur visited Sri Lanka from 10 to 23 October 2017 (see A/HRC/39/53/Add.1).

3. In September 2017, the Special Rapporteur participated in the thirty-sixth session of the Human Rights Council, presenting a thematic report on transitional justice in weakly institutionalized post-conflict settings (A/HRC/36/50) and a global study on transitional justice (A/HRC/36/50/Add.1).

4. On 19 and 20 September 2017, the Special Rapporteur, together with the Special Adviser of the Secretary-General on the Prevention of Genocide, held a first expert group meeting with a view to preparing their joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, particularly to the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence, pursuant to Human Rights Council resolution 33/19 (A/HRC/37/65), exploring the relationship between transitional justice and atrocity prevention, bringing together representatives of Member States, United Nations agencies, funds and programmes, special procedure mandate holders, civil society organizations and the academic community. At the meeting, participants focused on how education and constitutional reform could contribute to atrocity prevention.

5. From 25 to 27 October 2017, the Special Rapporteur presented his report on a comprehensive framework approach to prevention (A/72/523) to the General Assembly.

6. On 13 and 14 November 2017, a second expert group meeting was organized by the mandate holder together with the Special Adviser. At the meeting, participants emphasized the potential contributions of security sector reform and the strengthening of civil society to atrocity prevention.

7. From 14 to 17 November 2017, the Special Rapporteur participated in an event relating to the Truth, Justice and Remembrance project undertaken by the Robert Bosch Foundation, in Berlin.

8. From 30 November to 3 December 2017, the Special Rapporteur participated in an event organized by the Max Planck Foundation for International Peace and the Rule of Law, in Bogotá.

9. On 2 March 2017, the Special Rapporteur, together with the Special Adviser of the Secretary-General on the Prevention of Genocide, presented to the Human Rights Council their joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law (see para. 4 above).

10. On 5 March 2017, a high-level side event at the thirty-fourth session of the Human Rights Council was held to launch the aforementioned joint study with the participation of the Special Rapporteur and the Special Adviser of the Secretary-General on the Prevention of Genocide, moderated by Tim Sebastian, with the participation of the Special Envoy of the African Union on Women, Peace and Security, Bineta Diop; the Regional Director for Asia Pacific at the Open Society Foundation, Binaifer Nowrojee; Marko Milanovic from the University of Nottingham; and Rama Mani from the University of Oxford.

11. Also on 5 May, the Special Rapporteur participated as a panellist in a side event on the theme "Transitional justice in Sri Lanka: will it deliver for the victims of enforced disappearances?".

12. On 21 March 2018, the Special Rapporteur took the floor in the context of the oral briefings to the Human Rights Council by the United Nations High Commissioner for Human Rights on Sri Lanka under agenda item 2. Beforehand, he held a meeting with the Minister of Foreign Affairs of Sri Lanka.

13. On 22 March 2018, the Geneva Peacebuilding Platform organized a public discussion with the Special Rapporteur on the contribution of transitional justice to the prevention of mass atrocities, held in Geneva.

III. Activities of the Special Rapporteur

14. The new mandate holder assumed his functions on 1 May 2017, and has since engaged in and held discussions with a number of Governments, civil society organizations, representatives of victims and other stakeholders.

15. The Special Rapporteur renewed requests to visit Côte d'Ivoire, Guatemala and Nepal. Requests to visit Brazil, Cambodia, the Democratic Republic of the Congo, Guinea, Indonesia, Japan, Kenya and Rwanda are still pending.

16. The Special Rapporteur attended the annual meeting of special procedure mandate holders held from 4 to 8 June 2018 in Geneva. In the same week, he met with the ambassadors of Guatemala, Nepal, Spain, Switzerland and Tunisia. On 4 June, he participated in the launch of the *United Nations Principles to Combat Impunity: A Commentary*, organized by the Geneva Academy of International Humanitarian Law and Human Rights.

17. From 8 to 10 May, the Special Rapporteur participated in a conference on the theme "Reparations: fifteenth anniversary of the National Compensations Programme" and the "Public forum on Genocide", organized by Impunity Watch, in Guatemala City.

18. From 19 to 21 June, the Special Rapporteur gave an introductory statement for a panel discussion on the theme "Transitional justice and the fight to end impunity", held during an Annual Rule of Law Meeting of the United Nations Development Programme (UNDP), on the theme "Strengthening the rule of law and human rights for sustaining peace and fostering development," in New York. During that period, he also met with representatives of several civil society organizations.

IV. Approach of the Special Rapporteur

19. The Special Rapporteur pays tribute to the work of the previous mandate holder, Pablo de Greiff, and will build upon his call for a comprehensive approach to transitional justice, anchored in standards for the redress of gross violations of human rights and serious violations of international humanitarian law, and the prevention thereof.

20. In the section below, the Special Rapporteur outlines a number of aspects he deems crucial in the implementation of his mandate.

21. On the basis of the foundational work of the previous mandate holder both in relation to the elements of the mandate — truth, justice, reparation and guarantees of non-recurrence — and the linkages of work on transitional justice with other policy interventions, in particular development, and peace and security, the Special Rapporteur intends to develop the mandate further, to respond to the challenges currently faced in the field of transitional justice and in spheres that are interconnected but that rarely coordinate with work on transitional justice.

22. The Special Rapporteur will continue to carry the mandate forward through the open dialogue previously established with all relevant actors: Member States and their relevant institutions, international and regional organizations, the treaty bodies and the special

procedures of the Human Rights Council, national human rights institutions, civil society organizations, representatives of victims, other practitioners and academic entities.

23. Human rights and the State obligations that stem from them are dynamic and progressive. The Special Rapporteur will identify in a continuous manner updated aspects of each of the four elements of the mandate, including new jurisprudence from relevant international, regional or domestic entities, and good practices that he deems important to share.

24. The content of the right to the truth and of what is expected from the proper functioning of truth commissions, the parameters of justice and the scope of measures of reparation and guarantees of non-recurrence cannot be devised in exactly the same way today as they were understood when the first transitional justice processes were implemented.

25. Much of this progress made has been the result of the work done by international and regional human rights monitoring bodies, and by related advocacy efforts of civil society actors. In order to comply with the above-mentioned objective, the Special Rapporteur will reflect and draw on the analysis of transitional justice processes carried out by the relevant bodies of the United Nations and regional organizations. Naturally, the development of the mandate must be in harmony with the human rights system of which it is part, ensuring cross-fertilization and the prioritization of a "pro persona" perspective as hermeneutical method. On this basis, the Special Rapporteur is keen to keep stakeholders up to date on the most recent developments.

26. Transitional justice situations are diverse and do not have the same origin; some processes derive from situations of armed conflict, others from authoritarian regimes, or a combination of them. There may also be other forms of violence, or specific and particular situations in a State that give rise to the application of measures of transitional justice, which do not precisely fit in the above-mentioned categories.

27. The Special Rapporteur therefore deems it important to assess whether different situations can, or indeed must, give rise to different solutions under the broad spectrum of transitional justice measures, and how they can have an impact on each of the pillars of the mandate and its comprehensive approach.

28. For example, in situations of post-conflict transitional justice, it will be essential to address, through an array of public policy measures, the structural causes that gave rise to or allowed the conflict. Such causes are often linked to situations of extreme poverty, diverse forms of discrimination or denial of individual or collective rights. This constitutes an area of interest for the future substantive work of the mandate; in particular, exploring how to undertake transitional justice processes that do not continue to foster or deepen stigmatization and discrimination.

29. In this vein, the Special Rapporteur also undertakes to work with Member States initiating or undertaking transitional justice processes, by means of an interactive and open dialogue and in the spirit of full cooperation, to technically advise and assist them to carry out such processes in compliance with international human rights law, in the design and consolidation of peace and security, centred on a "pro persona" perspective and aimed at building and strengthening robust and sustainable societies based on the rule of law.

V. Preliminary outline of areas of interest to the Special Rapporteur

30. Beyond the commitments regarding the discharge of the mandate made in the section above, the Special Rapporteur would like to highlight key areas of interest that he deems priorities as he takes on the mandate and that he intends to develop and assess throughout his mandate. These areas relate to a broad array of issues, such as those at the core of the transitional justice field and cross-cutting questions, but also adjacent areas where similar challenges are posed.

A. Fight against impunity and the establishment of trust as overarching objectives

31. At the outset, the Special Rapporteur will follow up on the study of two overarching issues that are integral components of transitional justice processes: the fight against impunity and re-establishment of civic trust. One of the problems that most affect victims of repression and/or conflict and that usually produces re-victimization is the impunity of those who have perpetrated or masterminded massive or systematic violations of human rights or international humanitarian law. Justice systems are often weak or non-operational in the aftermath of mass violations, which obstructs any chance of accountability or the realization of the right to justice for past abuses. Efforts should be made to increase the effectiveness of justice procedures. The Special Rapporteur is aware that the concept of justice, however, should be understood as being broader than mere criminal justice, although naturally it must include it.

32. Impunity also arises from the failure of States to provide victims with effective remedies and reparation, to ensure the right to know the truth about violations endured, and to adopt measures to prevent the recurrence of violations. In underscoring the need for a comprehensive approach to fighting impunity, where each component plays a necessary role in restoring accountability, the Special Rapporteur will examine the normative framework and the different models and mechanisms possible to combat impunity in order to identify good practices and lessons learned from the experience of different States.

33. Part of this comprehensive approach also necessarily entails the central role and broad participation of victims and other citizens, in particular women and minorities, in the design and implementation of programmes for fighting impunity. In all transitional contexts, civil society, including victims' organizations, have played a crucial role in the fight against impunity. The mandate holder will consider existing practices and assess the extent to which their positive and necessary role has been ensured and facilitated by the State.

34. Fighting impunity and ensuring that violations are acknowledged and addressed by State institutions provides a measure of recognition to victims and helps to establish trust among members of society. The role of trust-building in transitional justice processes will also be a continuing focus of the work of the mandate holder.

35. Conflict and the rule of authoritarian regimes often lead to the disintegration of social trust both vertically, between the State and its people, and horizontally, between individuals and communities. This phenomenon creates a negative feedback loop and becomes both a condition and a consequence of the continuation of violence, as described by the previous mandate holder. The measures underpinning the four elements of the mandate seek to contribute to vertical and horizontal trust-building. The Human Rights Council, in its resolution 18/7, in which it created the mandate, stressed its expectation that the comprehensive implementation of the four measures would contribute to the restoration of confidence in the institutions of the State and promote the rule of law.

36. Trust should not be understood as mere normative or procedural predictability. Instead, trusting an institution amounts to assuming that its constitutive rules, values and norms are shared by its members or participants and are regarded by them as binding (A/68/345, para. 39). Trust, therefore, rests on the expectation of commitment by all actors to action on the basis of shared norms.

37. On the conceptual basis described above, the Special Rapporteur will explore practical experiences and good practices in re-stablishing trust in State institutions, with emphasis in such areas as the vetting of judicial or security institutions and the interlinkages of the forward-looking trust element, with symbolic and material reparation measures for victims and apologies from State institutions.

B. National and regional experiences and practices regarding the four elements of the mandate

38. On the basis of the foundational work of the previous mandate holder with regard to the four elements of the mandate, the Special Rapporteur intends to increase possibilities for the sharing of experiences and practices at the domestic or regional levels in relation to transitional justice measures, with a human rights-based approach. The sharing of experience in different initiatives, including regional approaches, will allow States in transition to have an overview of possible and already tested options, and therefore be better equipped to adapt those options to the particular situation at hand.

39. The Special Rapporteur will address this objective in his report on practical experiences in reparations, which he will submit to the Human Rights Council in 2019.

C. Further development of the area of guarantees of non-recurrence

40. As outlined in the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), guarantees of non-recurrence are an integral part of reparation and redress for victims.

41. When the Human Rights Council established the mandate in its resolution 18/7, it its emphasized the adoption of guarantees of non-recurrence within, or of, the entities that had themselves committed gross violations of human rights and serious violations of international humanitarian law. It also made specific reference to institutional reform and the vetting of public employees and officials.

1. A proactive approach to non-recurrence

42. Since the adoption of the set of principles for the protection and promotion of human rights through action to combat impunity, the transitional justice debate has gradually moved away from the concept of "guarantees of non-recurrence" as covering solely institutional reforms and vetting. In several reports submitted by the previous mandate holder to the Human Rights Council and the General Assembly, he suggested that the concept of guarantees of non-recurrence should be viewed on three different levels: on that of official State institutions, of civil society, and of the spheres of culture and personal dispositions (see A/HRC/30/42, A/72/523 and A/HRC/37/65).

43. Building on the call made by the previous mandate holder for a broad preventive framework, the Special Rapporteur intends to move away from a "reactive" approach, is centred on institutions, towards a more "proactive" one that encompasses fields and areas that go well beyond the institutions that had committed the violations in the first pl.ce.

44. This is reflective of the fact that, in many contexts, the United Nations and regional and bilateral actors have come to realize that transitional justice and preventive initiatives centred on institutions, as important as they might be, have hardly ever reached the level of the broader society, let alone the grass-roots level. Such an institutions-heavy focus has the potential to exclude parts of society that are crucial to efforts to re-establish trust, including at the local community level.

45. It is in this connection that the Special Rapporteur intends to focus his attention on these broader fields that bear a preventive potential, in particular the field of formal and informal education.

2. Enhancing the focus on the field of cultural and individual dispositions: education, arts and culture

46. Education plays an important role in society by transmitting established knowledge and shared culture. In situations of transition from conflict or authoritarian regimes, education can contribute to social cohesion and peace by facilitating the transmission of memory about past events, engaging society — especially the younger generations — in a dialogue about those events, and promoting a culture of human rights and democracy.

47. In past reports, the Special Rapporteur has noted the potential of education and the teaching of history as powerful tools in the prevention of the recurrence of violations. In those reports, the mandate holder has noted that, because of its formative potential, education can contribute to shaping new norms, mediating between contending narratives of the past, and nurturing a culture of dialogue and democratic citizenship across generations (A/HRC/30/42, para. 93). When not aligned with the aims of transitional justice, however, education policies and methods can fuel resentment, deepen inequalities and foment intolerant attitudes. Given the pivotal role of education in societal development, it is unlikely that any prevention strategy will be successful without long-term changes in education (A/72/523, para. 78).

48. The importance of including objective and multi-faceted history education in national curricula was also highlighted in the joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law (see A/HRC/37/65). Successful history education is not only about producing reliable textbooks but also about facilitating a productive reflection on past events and human behaviour, which can in turn contribute to reconciliation processes (A/HRC/37/65, paras. 75, 79, 80 and 98).

49. Arts and other cultural interventions, including memorialization, are also important means of generating empathy and solidarity, and strengthening sustainable processes of social integration. Similarly, the preservation of and access to archives are an educational tool that can help to fight denial and revisionism, important for history education and institutional reform. Together with education, these polices can contribute to nurturing cultures and individuals that can sustain prevention aims over time (A/72/523, paras. 79–80).

50. The Special Rapporteur in the field of cultural rights presented two studies on historical and memorial narratives in divided and post-conflict societies, for which she worked in close collaboration with the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence (see A/68/296, paras. 86). Actions in the cultural sphere can help to achieve transitional justice by focusing on the promotion of cultural interaction and understanding, exchanging perspectives about the past and designing a cultural landscape reflective of cultural diversity (A/HRC/25/49, para. 47–48). She recommended that history teaching and memorialization processes should adopt a multi-perspective approach aimed at promoting civic engagement, critical thinking and debate about representations of the past and present challenges.

51. It is in this connection that the current Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence intends to examine national (and possibly regional) experiences and substantive debates concerning the role of education and history teaching in supporting transitional justice goals, and explore how these goals can help to identify educational deficits and inform education sector reform. It should be noted that educational reform and curricula development should not attempt to minimize either the responsibility of the State with regard to violations or the need to fulfil the rights to truth, justice and reparation for victims.

D. Gender perspective

52. As established by the mandate holder in his first report of to the Human Rights Council, a gender perspective has been consistently applied throughout the work of the mandate (A/HRC/21/46, paras. 58–59), whether with regard to thematic issues, such as challenges in truth commissions (A/HRC/24/42, para. 36), prosecutorial strategies (A/HRC/27/56, paras. 36 (e), 57 (c) and 86), reparations (A/69/518, paras. 68–73) or guarantees of non-recurrence (A/HRC/30/42, para. 63), or to the context of country visits.

53. The issues addressed to date by the mandate holder during country visits include the identification of the gender-related dimension of violations and abuses committed during the respective period of conflict and/or repression; the insufficient involvement and heeding of women during national consultations on transitional justice policies; the insufficient representation of women in truth commissions, alongside the need for gender-specific

training for all commissioners and other members of transitional justice mechanisms in the design and implementation of a gender-sensitive strategy; the challenges of ensuring that reparation schemes are gender-sensitive; and the need to ensure women's access to land in the context of reparations and land reform.

54. Most debates in the field of transitional justice with regard to gender remain focused on women as victims of sexual violence. Another recurrent key aspect analysed in theory and practice pertains to reparations and their potential transformative nature (A/69/518, paras. 72).[1] The Special Rapporteur intends to identify, analyse and share practical experiences of reparations with a built-in gender perspective, in consultation with stakeholders, in a thematic report in the coming year (see also paras. 39–40 above).

55. In addition, the Special Rapporteur will, in a future thematic report, thoroughly examine and identify the multi-layered aspects of a gender perspective in the four elements of the mandate.

56. A number of pertinent issues relate to strengthening women's involvement and participation in the conceptualization, design and implementation of national transitional justice strategies and mechanisms. In many contexts, the important potential of women in these crucial processes remains largely unutilized, neglected or unrecognized. In this connection, the work of the Special Rapporteur will have to take into account the relevant political and social factors that constrain the inclusion of women. While in many situations women made a crucial contribution to local, community-based initiatives, they are rarely involved decision-making processes.

57. The processes surrounding peace agreements, which remain frequently in the hands of political and military (elite) male representatives, are a case in point. Moreover, despite their substantive contribution to bringing about political transformation, women frequently fail to gain from the reform policies adopted. The more inclusive character of more recent experiences nonetheless give some hope. It is therefore also important to shed more light on the preconditions that would create an enabling environment for women in their diversity, to allow them to take a more proactive role in these processes.

58. Another topic that should be elaborated in this context is how education — both formal and informal — and civic and political socialization can contribute to maintaining patriarchal "masculinities" that affect the shape and implementation of transitional justice processes.

E. Transitional justice and non-State actors

59. Like the protection and promotion of human rights, the field of transitional justice struggles with the fact that the current international legal framework remains centred on the State. While the Special Rapporteur notes some important developments in international law, including the Rome Statute of the International Criminal Court and soft law standards pertinent to some areas of transitional justice, he stresses that the legal framework has not yet adjusted to the factual power and control exercised by non-State actors. This has repercussions not only in terms of abuses committed by non-State actors against individuals and the question of their redress on an equal footing as for victims of human rights violations committed by the State, but also on how transitional justice measures should be designed and equipped to suit situations on the ground.

60. When dealing with non-State actors, the overwhelming majority of practitioners' work and academic writings is dedicated to conflict (and post-conflict) situations and the existence of armed opposition groups, paramilitary groups, terrorist groups, mercenaries, mafia-type organizations, urban gangs and other similar groups, and their various structures and operational modes. The impact of such non-State actors has not, however, been systematically analysed in the context of the question of the adequacy of transitional justice mechanisms, particularly in weakly institutionalized post-conflict situations, which have

[1] See also Guidance note of the Secretary-General, "Reparations for conflict-related sexual violence", available at www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf.

significantly different characteristics to situations in which transitional justice measures first originated (see A/HRC/36/50).

61. Beyond this specific type of non-State actor, the Special Rapporteur will dedicate his attention to the constructive role that other non-State actors can play in transitional settings, including for example (transnational) companies, religious or other faith-based actors, the media and artists. He believes that the productive potential of such actors has to date been understudied and therefore underutilized.

62. To illustrate, in a recent study conducted jointly by the mandate holder and the Special Adviser of the Secretary-General on the Prevention of Genocide, the role of religious leaders and actors in relation to the prevention of atrocity crimes was highlighted (A/HRC/37/65, paras. 81–83), with specific reference to the Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes.[2]

63. Because of the complexity relating to these different actors (transnational companies, religious and faith-based actors, the media and artists), such issues may merit the drafting of different types of thematic reports or the preparation of joint studies, together with one or several special procedures of the Human Rights Council.

F. Participation of victims and the question of ownership

64. On the basis of the reports of the previous mandate holder on the themes of the participation of victims in transitional justice measures, in which he studied the different types of participation in relation to the four elements of the mandate and described the conditions for success for such participation (A/HRC/34/62), and on national consultations concerning the design and implementation of transitional justice measures, in which he addressed preconditions for success of such national consultation, their operational challenges, and their contribution to the legitimacy of transitions (see A/71/567), the Special Rapporteur intends to address the question of the participation of victims and victim-centredness as a cross-cutting issue that will transcend both his thematic and country-related work.

65. Inclusion and participation are two elements that aim at ensuring that transitional justice measures respond and, indeed, redress the grievances of victims and affected communities. It is the Special Rapporteur's intention to work with relevant civil society organizations and victims' associations with a view to further identify factors that support the eventual beneficial effects of participation for both victims and society at large. In this connection, he also intends to consider more informal ways of participation — those that to date have been invisible and therefore unaccounted for.

66. Furthermore, the participation of victims is also likely to alter the dynamics with regard to the ownership of the origins of transitional justice and their implementation. The well-known and often proclaimed principle of "local ownership" deserves more detailed elaboration in this connection, as do its ramifications for transitional justice processes as they evolve. The Special Rapporteur intends to study the intersection of participation and ownership throughout his mandate, specifically by drawing on recent examples observed in different States, and related studies already conducted by practitioners.

G. Transitional justice and the Sustainable Development Goals

67. Justice has too often been traded off against short-term economic development and the requirements of "stability", with disregard for State obligations to provide accountability for gross human rights violations.[3] Consequently, the previous mandate

[2] See www.un.org/en/genocideprevention/documents/publications-and-resources/Plan%20of%20Action_Religious_Prevent-Incite-WEB-rev3.pdf.

[3] See also the statement made by the previous mandate holder to the Third Committee at the sixty-eighth session of the General Assembly on 25 October 2013, available from https://papersmart.unmeetings.org/media2/703424/statement-by-mr-pablo-de-greiff-item-69.pdf.

holder made the case for firmly anchoring justice and right-related concerns in the new post-2015 development agenda. In his report to the General Assembly (A/68/345), he explained that justice, security and development could not be promoted one at the expense of the other, and highlighted the development potential of measures underpinning the four elements of the mandate.

68. Gross human rights violations or serious violations of international humanitarian law affect not just direct victims but "spill over" to society as a whole, magnifying their negative impact.[4] Massive human rights violations leave in their wake conditions that hamper development, such as a weak sense of people as rights-bearers and deep social mistrust (see paras. 35–38 above).

69. Transitional justice and human development aim at building just, peaceful and inclusive societies, and therefore complement and mutually reinforce each other. Past development frameworks have hailed development success stories in countries otherwise affected by large-scale deficits in security, justice and rights. Experience has demonstrated, however, that narrow development efforts that exclude considerations pertaining to justice or rights fail to achieve sustainable human development.

70. The development discipline has progressed significantly since the days when development was considered to be merely a matter of economic growth to the current conceptualization of human development that also includes aspects relating to institutional design, good governance, peace and security, and also to broader indicators of well-being. The development sector now understands that, in transitional settings, transitional justice measures can help to construct societies based on the rule of law and that can foster human development. This shift had led to greater attention being paid to the nexus between the rule of law, rights and development. Development actors also increasingly engage to empower civil society to exercise its rights and to participate in policymaking. Furthermore, transitional justice and development actors increasingly work together to address the root causes of conflict and violence that often lie at the heart of economic and social exclusion, discrimination and inequality.[5]

71. While past development frameworks, including the Millennium Development Goals, have failed to track either existing legal obligations or popular aspirations relating to justice, the Sustainable Development Goals adopted in 2015 introduced in its Goal 16 a number of targets that are directly related to transitional justice aims; such as:

- Promoting the rule of law and ensuring equal access to justice
- Developing effective, accountable, and transparent institutions
- Reducing all forms of violence
- Reducing corruption and strengthening the recovery and return of stolen assets
- Ensuring responsive, inclusive and participatory decision-making at all levels
- Ensuring public access to information

72. Comprehensive transitional justice measures can also contribute to other Sustainable Development Goals, such as ensuring inclusive and equitable quality education (Goal 4), achieving gender equality and empowering all women and girls (Goal 5), and reducing inequality within and among countries. The nexus between education and transitional justice has been explored above. Addressing laws, practices and institutions that reproduce gender imbalances and violence is also a vital aspect of transitional processes. Because of the disproportionate impact of human rights abuses on women, it is important to ensure that development and transitional justice process have a transformational impact on women's lives. In addition, transitional justice processes can help to reduce inequality and

[4] Ibid.

[5] See UNDP, "Helen Clark: A Role for Development in Transitional Justice: the Arab Spring and Beyond", 14 November 2011.

marginalization by increasing capacities for agency, building social capital and addressing structural inequalities.[6]

73. It is in this connection that the Special Rapporteur intends to undertake a practice-oriented study on transitional justice aspects that are a precondition and a by-product of the implementation of the Sustainable Development Goals. This undertaking will be based on the foundational work of the previous mandate holder, and comprise the whole wealth of the Goals.

H. Transitional justice and corruption

74. Originally, transitional justice mechanisms have not included addressing violations associated with corruption or other economic crimes, but rather focused on gross violations relating to civil and political rights, such as disappearances, extrajudicial killings, torture and other ill-treatment. Gradually, however, the scope of truth-seeking mechanisms has been expanded to also address violations of economic, social and cultural rights (for example, the Commission for Reception, Truth and Reconciliation in Timor-Leste), economic crimes (the Truth and Reconciliation Commission in Liberia) and grand corruption and the exploitation of national and public resources (the Truth, Justice and Reconciliation Commission of Kenya) (see also A/HRC/24/42, para. 35).

75. The challenge posed by corruption and how to address and fight it during political transitions has come to the fore in the past five to seven years, when corruption emerged in a number of countries as a major grievance alongside joblessness and other violations of social and economic rights, in addition to rampant violations of civil and political rights.

76. The issue of corruption then appeared in a new light, as it was seen as an enabler of various other gross violations: as a means to project economic and political power for private and/or partisan ends, and hence to maintain a culture of oppression. Widespread corruption in the public sector is the result of a serious failure in governance that can develop and then be driven by weaknesses in the rule of law, such as ineffective institutions of accountability and civic participation in conjunction with a State that acts less out of the public interest and more to keep those currently in power in place.

77. Against this background, it becomes evident that a deeper understanding of the issue of corruption will not only shed more light on the preconditions that have allowed gross violations to be committed in the first place but will also help to identify the structural deficiencies that would need to be addressed under the heading of "guarantees of non-recurrence".

78. The Special Rapporteur intends, on the one hand, to dedicate a thorough assessment and conceptual study to the interplay of corruption with gross violations of both civil and political, as well as economic, social and cultural rights; on the other, he will also review recent practices of transitional justice mechanisms aimed at addressing corruption and other economic crimes, and their intersection and collaboration with other State institutions in the field of corruption.

VI. Conclusions and recommendations

79. **Building upon the call made by the previous mandate holder for a comprehensive approach to transitional justice, anchored in standards for the redress of gross violations of human rights and serious violations of international humanitarian law, and the prevention thereof, the Special Rapporteur intends to further develop the work of the mandate, responding to the challenges currently faced in the field of transitional justice and in areas that are interconnected, but rarely coordinated with transitional justice efforts.**

[6] See ibid. See also David Tolbert and Roger Duthie, "Transitional Justice in Countries Emerging from Conflict: A Step Toward Sustainable Peace and Development", ICTJ, 31 May 2018.

80. The Special Rapporteur stresses that the development of the mandate will be undertaken in harmony with the human rights system of which it is part, ensuring cross-fertilization while prioritizing a "pro-persona perspective" as hermeneutical method.

81. Working with all stakeholders in a continuing spirit of open dialogue, the Special Rapporteur commits to provide through his work updated information regarding aspects of each of the four elements of the mandate, including new jurisprudence from relevant international, regional or national entities, and good practices, which he deems important to share.

82. The Special Rapporteur has identified and presents a preliminary outline of the areas of interest that he intends to develop and assess throughout his term as mandate holder. These areas relate to a broad array of issues, such as those at the core of the transitional justice field, cross-cutting questions, and adjacent areas struggling with similar challenges.

83. As an overarching theme, the Special Rapporteur will focus his attention to the fight against impunity and the (re-)establishment of trust as the overarching objectives of transitional justice. He stresses that efforts must be re-directed at increasing the effectiveness of justice procedures, underlining that the concept of justice is not confined to but naturally includes criminal justice.

84. Throughout his mandate, the Special Rapporteur intends to enhance possibilities for sharing experiences and practices at the national and regional levels in relation to the four elements of the mandate, with a human rights-based approach.

85. In his future efforts, in particular in relation to guarantees of non-recurrence, the Special Rapporteur intends to continue to move away from the merely "reactive" approach, centred on institutions, towards a more "pro-active" one, to encompass areas that go beyond those institutions that had directly committed the violations in the first place. In this connection, the Special Rapporteur intends to focus his attention on these broader areas that have preventive potential, especially in the field of formal and informal education.

86. Another key area of engagement relates to the strengthening of the gender perspective in both thematic and country-related work. This will also include a full thematic report in which the Special Rapporteur will thoroughly examine and identify the multi-layered aspects relating to a gender perspective regarding the four elements of the mandate.

87. In relation to non-State actors, the Special Rapporteur intends to concentrate on two issues: first, the impact of armed groups, in particular in weakly institutionalized (post-)conflict settings, and ensuing questions regarding the adequacy of transitional justice mechanisms; and second, an examination of the constructive role that other non-State actors — such as companies (including transnational ones), religious or other faith-based actors, the media and artists — can play to further the goals of transitional justice.

88. In addition, the Special Rapporteur will make efforts to further identify factors relating to the beneficial effects of participation of victims and society at large, looking at both formal and informal ways of participation. He will also consider the intersection of participation and ownership, and related ramifications for transitional justice processes.

89. Regarding development, the Special Rapporteur intends to conduct a practice-oriented study on the aspects of transitional justice that are a precondition to and a by-product of the implementation of the Sustainable Development Goals, on the basis of the foundational work undertaken by the previous mandate holder.

90. **Lastly, the Special Rapporteur intends to make a thorough assessment and conceptual study of the interplay of corruption with gross violations of both civil and political rights, as well as economic, social and cultural rights, in transitional contexts, and will review recent practices of transitional justice mechanisms aiming at addressing corruption and other economic crimes.**